

**SUPREME COURT OF ARKANSAS**

**No.**

**Opinion Delivered** October 26, 2006

IN RE: REPORT OF THE  
LEGISLATIVE TASK FORCE ON  
DISTRICT COURTS

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**PER CURIAM**

Act 1849 of 2005 created the Legislative Task Force on District Courts, and it was charged with conducting a comprehensive study of the transition of district court judges to state employee status and the funding and role of district courts. The Task Force has completed its work and filed its report on September 1, 2006. The report can be found at the Arkansas Judiciary website: <http://courts.state.ar.us/courts/district.html>.

The report was transmitted to the Supreme Court by Senator Womack, Co-chair of the Task Force, and a copy of his letter of transmittal is appended to this order. The Task Force recommends that the Supreme Court adopt an administrative order, initially limited to the judges participating in a pilot program, which permits these district court judges to preside over matters pending in the circuit court. The Task Force has prepared a draft of the proposed administrative order, and makes this observation: “this proposed administrative order, which is based on local rule 72 of the Federal District Court, would be the most effective way of addressing an issue upon which no agreement has been reached previously.”

Senator Womack’s letter concludes with these comments: “It is anticipated that legislation will be introduced in the 2007 session which will seek to implement the remaining recommendations

of the task force. Admittedly, the enactment of such legislation precedes the need for the court to adopt the proposed order. However, the task force requests the court to begin deliberations on the proposal.”

With this request in mind and with the legislative session fast approaching, in the interest of time, we are publishing the proposed administrative order as it was presented to us for general comment while we study it ourselves. Comments should be in writing and addressed to: Les Steen, Supreme Court Clerk, Attention Administrative Order District Courts, Justice Building, 625 Marshall , Little Rock, R 72201. The comments should be submitted no later than December 15, 2006.

### **Administrative Order Number \_\_\_\_\_**

#### **Full Time District Judges**

##### *1. Definition.*

- a. For purposes of this Administrative Order, the term "District Judge" means a state funded full time district court judge who is prohibited from practicing law.
- b. A district judge may perform such duties with respect to cases pending in circuit court as set forth below.

*2. Reference.* With the concurrence of a majority of the circuit judges of a judicial circuit, the administrative judge of a judicial circuit may refer matters pending in the circuit court to a district judge serving within the judicial circuit, with the judge’s consent, which shall not be unreasonably withheld.

*a. Reference of Non-Dispositive Matters.* When designated by the administrative judge of a judicial circuit, a district judge may hear and determine any non-dispositive pretrial matters pending before the circuit court, including those duties set out in Rule 1.8 (b) of the Arkansas Rules of Criminal Procedure. A decision of a district judge is final and binding and is subject only to a right of appeal to the circuit judge to whom the case has been assigned. A party may appeal the decision of a district judge by filing a motion within ten (10) days of the decision. Copies shall be served on all other parties and the district judge from whom the appeal is taken. The motion shall specifically state the rulings excepted to and the basis for the

exceptions. The circuit judge may reconsider any matter *sua sponte*. The circuit judge shall affirm the findings of the district judge unless they are found to be clearly erroneous or contrary to law.

*b. Reference of Dispositive Matters.*

A. *General.* The administrative judge may designate a district judge to conduct hearings, including evidentiary hearings, and to submit proposed findings of fact and recommendations for the resolution of any dispositive matters, including, but not limited to, the following:

- i. Motions by the defendant to dismiss or quash an indictment or information;
- ii. Motions to suppress evidence;
- iii. Applications to revoke probation, including the conduct of the "final" probation revocation hearing;
- iv. Motions for temporary restraining orders and preliminary injunctions;
- v. Motions to dismiss for failure to state a claim upon which relief may be granted;
- vi. Motions to dismiss an action and to review default judgment;
- vii. Motions to dismiss or to permit the maintenance of a class-action; and
- viii. Motions for judgment on the pleadings or for summary judgment.

B. *Prisoner Petitions.* A district judge may review prisoner correspondence and petitions; enter orders with regard to *in forma pauperis* petitions; and conduct proceedings in Rule 37 petitions.

C. *Objection.* When a district judge files proposed findings or recommendations with the circuit judge, a copy shall be mailed to all parties. Within ten (10) days after being served with a copy, any party may serve and file written objections to such proposed findings, recommendations or order. The circuit judge must make a de novo determination of any matters which have been specifically objected to by the litigants, but this does not necessarily require the circuit judge to conduct a hearing on contested issues. In some instances, it may be necessary for the circuit judge to modify or reject the findings of the district judge, to take additional evidence, recall witnesses, or recommit the matter to the district judge for further proceedings.

D. *Statement of Necessity.* A party objecting to the proposed findings and recommendations of a district judge, who desires to submit new, different, or additional evidence and to have

a hearing for this purpose before the circuit judge shall file a "statement of necessity" at the time of filing of the written objections, and which shall state:

- i. Why the record made before the district judge is inadequate;
- ii. Why the evidence to be proffered (if such a hearing is granted) was not offered at the hearing before the district judge; and
- iii. The details of any testimony desired to be introduced in the form of an offer of proof, and a copy, or the original, of any documentary or other non-testimonial evidence desired to be introduced.

From this submission, the circuit judge shall determine the necessity for an additional evidentiary hearing, either before the district judge or before the circuit judge.

c. *Master References.* When designated by the administrative judge, a district judge may serve as a special master in accordance with the provisions of Rule 53 of the Arkansas Rules of Civil Procedure.

### 3. *Domestic Relations Cases and Protective Orders.*

a. A district judge may be specially designated by the administrative judge of the judicial circuit to conduct any or all proceedings in domestic relations cases. The final judgment, although ordered by the district judge, is deemed a final judgment of the circuit court and will be entered by the clerk under Rule 58 of the Arkansas Rules of Civil Procedure. Any appeal shall be taken to the Arkansas Supreme Court or Court of Appeals in the same manner as an appeal from any other judgment of the circuit court.

b. A district judge may be specially designated by the administrative judge of the judicial circuit to conduct proceedings in applications for protective orders.

4. *Assignment.* A district judge serving within a judicial circuit may be assigned to replace a circuit judge of the judicial circuit pursuant to Amendment 80, Section 13 (C, D) and Administrative Order Number 16. A district judge so assigned shall serve without additional compensation.

5. *Civil Consent Jurisdiction.* A district judge may be specially designated by the administrative judge of the judicial circuit to conduct any or all proceedings in jury or non-jury civil matters upon the consent of the parties.

a. *Notice.* The clerk shall give the plaintiff notice of the consent jurisdiction of a district judge when a civil suit is filed. The clerk shall also attach the same notice to the summons for service on the defendant.

b. *Consent.* Any party may obtain a "Consent to District Judge Jurisdiction" form from the

Clerk's Office, which shall provide that any appeal in the case shall be taken directly to the Arkansas Supreme Court or Court of Appeals.

c. *Transfer.* Once the completed forms have been returned to the clerk, the clerk shall then assign the case to a district judge and forward the consent forms for final approval to the circuit judge to whom the case was originally assigned. When the circuit judge has approved the transfer and returned the consent forms to the clerk's office for filing, the clerk shall forward a copy of the consent forms to the district judge to whom the case is reassigned. The clerk shall also indicate on the file that the case has been reassigned to the district judge.

d. *Appeal.* The final judgment, although ordered by a district judge, is deemed a final judgment of the circuit court and will be entered by the clerk under Rule 58 of the Arkansas Rules of Civil Procedure. Any appeal shall be taken to the Arkansas Supreme Court or Court of Appeals in the same manner as an appeal from any other judgment of the circuit court.

6. *Effective Date and Application.* Nothing in this rule shall impair or render ineffectual any proceeding or procedural matters which occurred before the effective date of this rule.

7. *Supreme Court.* A district judge, when performing duties with respect to cases pending in circuit court as set forth in this administrative order, shall be subject at all times to the superintending control of the circuit judges of the judicial circuit. However, in the event there is an extraordinary issue involving this administrative order upon which the judges are unable to reach an agreement, a district judge or a circuit judge may bring the matter to the attention of the Chief Justice of the Arkansas Supreme Court by setting out in writing the nature of the problem. Upon receipt of a complaint, the Supreme Court may cause an investigation to be undertaken by appropriate personnel and will take other action as may be necessary to insure the efficient operation of the courts and the expeditious dispatch of litigation in the judicial circuit.